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AMENDING THE IMMIGRATION AND NATIONALITY ACT TO DETER IMMIGRATION-RELATED MARRIAGE FRAUD AND OTHER IMMIGRATION FRAUD

SEPTEMBER 26 (legislative day, SEPTEMBER 24), 1986—Ordered to be printed

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Mr. THURMOND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 2270]

The Committee on the Judiciary, to which was referred the bill (S. 2270) to amend the Immigration and Nationality Act to deter immigration-related marriage fraud and other immigration fraud, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

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NEED FOR LEGISLATION

The Immigration and Nationality Act of 1952, as amended, (INA) imposes annual numerical limitations on the issuance of immigration visas. Some aliens in oversubscribed categoies wait years to be admitted. The value placed on marriage and the preservation of close family ties is evidenced by the exemption given immediate relatives of U.S. citizens from all numerical restrictions. The INA gives numerous benefits and waivers to persons who marry U.S.

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citizens or permanent residents. Marriage may be used to live in the United States when no other qualifying mechanism exists or to circumvent long waiting periods for other legitimate visas. It has been called "the most favored alien status" and is perceived as the cure-all for immigration problems or violations.

During a hearing held July 26, 1985, the Subcommittee on Immigration and Refugee Policy learned that these special privileges are being abused by persons who feign legitimate relationships to circumvent the law. The Commissioner of the Immigration and Naturalization Service testified that the number of persons acquiring status through marriage to U.S. citizens increased 59% from 78,058 in FY-1978 to 111,653 in FY-1984. Another 37,643 aliens married legal permanent residents. INS estimates that of these 149,296 aliens who entered as spouses in FY-1984, nearly 30% were involved in suspect marital relationships.

The Commissioner of the INS cited several problems in using the INA to deal with marriage fraud. Although section 241(c) presumes that a marriage that does not last two years was entered into fraudulently, the courts have held that the INA does not require that the marriage be viable at the time the immigration benefit is sought, nor does it require that the alien have been married for a certain period of time to qualify for permanent residence. Use of this section of the INA to deal with marriage fraud has been ineffective. Furthermore, the INA does not require an alien attempting to obtain a finance(e) visa to have personally met the U.S. citizen petitioner before a petition is approved, thereby permitting the easy entry of "mail order brides." Although the INA excludes aliens who have obtained a visa through fraud, it does not bar aliens who have only attempted marriage fraud.

A General Accounting Office report on marriage fraud controls in other countries concluded that most of the countries surveyed have stronger controls to prevent marriage fraud than the U.S. Japan, the Federal Republic of Germany (FRG), Italy, Sweden, Denmark, Great Britian, and France all impose a conditional resident status ranging from 10 years in Japan to 3 months in France. Among the countries considering marriage fraud a problem, only the U.S. does not now impose a conditional resident status.

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. DETERRING IMMIGRATION-RELATED MARRIAGE FRAUD.

(a) CONDITIONAL STATUS FOR PERMANENT RESIDENT STATUS BASED ON RECENT MARRIAGE.—Chapter 2 of title II of the Immigration and Nationality Act is amended by adding at the end the following new section:

"CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN SPOUSES AND SONS AND DAUGHTERS

"SEC. 216. (a) Notwithstanding any other provision of this act, an alien spouse (as defined in subsection (d)(1)) and an alien son or daughter (as defined in subsection (d)(2)) shall be considered, at the time of obtaining the status of an alien lawfully admitted for permanent residence, to have obtained such status on a conditional basis subject to the provisions of this section.

"(b)(1) The conditional status established under subsection (a) for an alien spouse and an alien son or daughter shall be terminated and the alien spouse or alien son or daughter shall be deportable from the United States if the Attorney General determines, before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence, that—

"(A) the marriage referred to in subsection (d)(1)—

"(i) was entered into for the purpose of procuring an alien's entry as an immigrant, or

"(ii) has been judicially annulled or terminated, other than through the death of a spouse;

"(B) a fee or other consideration (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) was given for the filing of a petition under section 204(a) or 214(d) with respect to the alien spouse or alien son or daughter; or

"(C) the parties to the marriage have not maintained a bona fide marital relationship.

In applying subparagraph (C), the Attorney General shall take into account the death or incapacity of a spouse.

"(2) The Attorney General shall remove the conditional status established under subsection (a) for an alien spouse or alien son or daughter, to be effective as of the second anniversary of the alien's obtaining the status of lawful admission for permanent residence described in subsection (d)(1), if during the period of 90 days before such date, the alien spouse and the spouse of the alien spouse (if not deceased) jointly submit to the Attorney General a petition which requests the removal of such conditional status and which establishes to the satisfaction of the Attorney General that—

"(A) the marriage referred to in subsection (d)(1)—

"(i) was entered into in accordance with the laws of the place where the marriage took place, and

"(ii) has not been judicially annulled or terminated, other than through the death of a spouse;

"(B) no fee or other consideration (other than a fee to an attorney for assistance in preparation of a lawful petition) was given for the filing of a petition under section 204(a) or 214(d) with respect to the alien spouse or alien son or daughter; and

"(C) the parties to the marriage have maintained a bona fide marital relationship, as evidenced by cohabitation, ownership or property jointly, filing of joint tax returns, or other relevant evidence during the previous period.

In applying subparagraph (C), the Attorney General shall take into account the death or incapacity of a spouse.

"(3) If no petition is filed in accordance with the provisions of paragraph (2), or if the Attorney General is not satisfied with the evidence presented, then the conditional status established under subsection (a) for an alien spouse or an alien son or daughter shall be terminated and the alien spouse and alien son or daughter shall be deportable from the United States as of the second anniversary of the alien's obtaining the status of lawful admission for permanent residence described in this section.

"(4) Notwithstanding paragraphs (2) and (3), the conditional status of an alien spouse who petitioned under paragraph (2), or the conditional status of an alien son or daughter of an alien spouse who petitioned under paragraph (2), shall continue until 90 days after the second anniversary of the alien's obtaining the status of lawful admission for permanent residence unless previously the Attorney General removed such status under paragraph (2) or such status was terminated under paragraph (3).

"(5) The Attorney General may remove the conditional status of an alien who fails to meet the conditions of this section and may adjust his status to that of an alien lawfully admitted for permanent residence if the alien demonstrates that extreme hardship would result if such alien is deported. In determining extreme hardship, the Attorney General shall consider circumstances occurring only during the period that the alien was admitted for conditional status as provided in this section.

"(6)(A) The Attorney General may stay the deportation of, and accord the status of lawful admission for permanent residence to, an alien spouse or an alien son or daughter of an alien spouse who—

"(i) after the expiration of the time period prescribed in this section petitions in accordance with paragraph (2);

"(ii) establishes to the satisfaction of the Attorney General that the facts contained in such petition are true at the time such petition is submitted; and

"(iii) pays a fine of $100, imposed by the Attorney General, for failure to submit such petition within the time limitations prescribed in paragraph (2).

"(B) Deportation proceedings shall be stayed against an alien petitioning in accordance with this paragraph pending a determination by the Attorney General under subparagraph (A).

"(c) For purposes of title III, in the case of an alien who is in the United States as a lawful permanent resident on a conditional basis under this section, the alien shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in the United States as an alien lawfull admitted to the United States for permanent residence.

"(d) For purposes of this section—

"(1) the term 'alien spouse' means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) by virtue of a marriage; and

"(2) the term 'alien son or daughter' means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) by virtue of being the son or daughter of an individual through a marriage described in paragraph (1).".

"(b) CLASSIFICATION PETITIONS.—Section 204(a) of such Act (8 U.S.C. 1154(a)) is amended—

"(1) by inserting "(1)" immediately after "(a)";

"(2) by inserting "(other than an alien ineligible from petitioning under paragraph (2))" after "any alien lawfully admitted for permanent residence"; and

"(3) by adding at the end thereof the following new paragraph:

"(2)(A) No classification petition claiming entitlement to a preference status as a spouse under section 203(a)(2) which was filed by an alien who, by virtue of a prior marriage, had been accorded the status of an alien lawfully admitted for permanent residence as the spouse of a citizen of the United States as described in section 201(b), or as the spouse of an alien lawfully admitted for permanent residence as described in section 203(a)(2), shall be approved until—

"(i) a period of five years has elapsed since the alien spouse acquired the status of an alien lawfully admitted for permanent residence, or

"(ii) the alien has established to the satisfacttion of the Attorney General by clear and convincing evidence that the prior marriage on the basis of which the alien obtained the status of an alien lawfully admitted for permanent residence was not contracted for the purposes of evading any provision of the immigration laws,

whichever occurs first.

"(B) This paragraph shall not apply to a petition filed by an alien whose prior marriage was terminated by the death of his or her spouse.".

(c) Criminal Penalty for Marriage Fraud.—Section 275 of such Act (8 U.S.C. 1325) is amended—

(1) by inserting "(a)" after "275.", and

(2) by adding at the end the following new subsection:

"(b) Any inidvidual who knowingly enters into a marriage contract for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than five years, or fined not more than $250,000, or both.".

(d) Limitation on Adjustment of Status.—Section 245 of such Act (8 U.S.C. 1255) is amended by adding at the end the following new subsection:

"(d) Subsection (a) shall not permit the adjustment of status of an alien who has the status of an alien lawfully admitted to the United States for permanent residence on a conditional basis under section 216.".

(e) Conforming Amendment.—The table of contents of such Act is amended by inserting after the item relating to section 215 the following new item:

"Sec. 216. Conditional permanent resident status for certain alien spouses and sons and daughters.".

"(f) EFFECTIVE DATE.—The amendments made by this section shall apply to alien spouses or alien sons or daughters who obtain the status of lawful admission for permanent residence on or after the date of the enactment of this Act.

SEC. 2. PREVENTING MARRIAGE FRAUD WITH RESPECT TO "K" NONIMMIGRANTS.

(a) REQUIRING PREVIOUS MEETING TO OBTAIN "K" NONIMMIGRANT VISA.—The third sentence of section 214(d) of the Immigration and Nationality Act (8 U.S.C. 1184(d)) of the Immigration and Nationality Act (8 U.S.C. 1184(d)) is amended by striking out "have a bona fide intention to marry" and inserting in lieu thereof "have previously met in person, have a bona fide intention to marry,".

(b) RESTRICTING SEPARATE ADJUSTMENT TO PERMANENT RESIDENT STATUS OF STATUS OF "K" NONIMMIGRANTS.—Section 245(d) of such Act (8 U.S.C. 1255(d)), as added by section 1(c) of this Act, is amended by inserting before the period at the end the following: "or of a nonimmigrant described in section 101(a)(15)(K)".

(c) REQUIRING FILING OF ADJUSTMENT OF STATUS PETITION.—Section 214(d) of such Act (8 U.S.C. 1184(d)) is amended by striking out the last sentence.

(d) EFFECTIVE DATES.—(1) The amendment made by subsection (a) shall apply to petitions approved on or after the date of the enactment of this Act.

(2) The amendment made by subsection (b) shall apply to adjustments occurring on or after the date of the enactment of this Act.

(3) The amendment made by subsection (c) shall apply to aliens issued visas under section 101(a)(15)(K) of the Immigration and Nationality Act on or after the date of the enactment of this Act.

(e) Waiver by the Attorney General.—The Attorney General in his discretion may waive the requirements for approval of a petition under section 214(d) of such Act (8 U.S.C. 1184(d)), as amended by subsection (a).

SEC. 3. EXCLUSION FOR MISREPRESENTATIONS.

(a) IN GENERAL.—Paragraph (19) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1152(a)) is amended to read as follows:

"(19) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure, or has sought to procure or has procured, a visa, other documentation, or entry into the United States or other benefit provided under this Act;".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to the receipt of visas by, and the admission of, aliens occurring after the date of the enactment of this Act based on fraud or misrepresentations occurring before, on, or after such date.

SEC. 4. TERMINATION OF WAIVERS OF EXCLUDABILITY.

Section 212 is amended by adding at the end thereof the following new subsection:

"(m) Any waiver of excludability granted under subsection (h), (i), or (j) to an alien who thereafter--

"(1) is accorded the conditional status established under section 216(a), or

"(2) is admitted to the United States in the Status of a nonimmigrant described in section 101(a)(15)(K),

shall terminate upon the termination of such status unless such alien has previously obtained the status of an alien lawfully admitted for permanent residence without conditions.".

SEC. 5. GROUNDS FOR DEPORTATION BASED ON FRAUD OR WILLFUL MISREPRESENTATION.

Section 241(a) of the Immigration and Nationality Act (8 U.S.C. 1251(a)) is amended—

(1) by striking out "or" at the end of paragraph (18);

(2) by striking out the period at the end of paragraph (19) and inserting in lieu thereof "; or"; and

(3) by adding at the end thereof the following new paragraph:

"(20) has sought to procure or has procured a visa or other documentation or entry into the United States or any other benefit provided under this Act by fraud or by willfully misrepresenting a material fact.".

HISTORY OF LEGISLATION

On July 26, 1985, the Subcommittee on Immigration and Refugee Policy held a hearing on immigration-related marriage fraud. On April 8, 1986, Senator Paul Simon, a member of the subcommittee, introduced S. 2270, a bill to deter immigration-related marriage fraud and other immigration fraud. The immigration subcommittee considered the bill on July 17, 1986 and adopted an amendment in the nature of a substitute. The subcommittee then ordered the bill reported favorably by a voice vote. The Committee on the Judiciary considered the bill on August 7, 1986, adopted an amendment in the nature of a substitute, and ordered the bill reported favorably by a voice vote.

ANALYSIS OF LEGISLATION

TWO YEAR CONDITIONAL STATUS

The bill establishes a two year conditional resident status for alien spouses or alien sons or daughters who receive permanent

resident status as a result of a marriage to a U.S. citizen or permanent resident alien.

If, during the first two years, the Attorney General determines that:

(a) the marriage was entered into for the purpose of procuring the alien's entry as an immigrant; or

(b) the marriage is judicially annulled or terminated; or

(c) a fee (other than a fee paid to an attorney for the filing of a lawful petition) was paid for the filing of the petition; or

(d) the parties have not maintained a bona fide maritial relationship,

the alien is subject to deportation.

After two years, the Attorney General will remove the conditional status if the couple jointly petitions the Attorney General and shows that:

(a) the marriage was entered into a accordance with the laws of the place where the marriage took place; and

(b) the marriage has not been judicially annulled or terminated; and

(c) no fee or other consideration was given for the filing of a petition; and

(d) the parties have maintained a bona fide marital relationship as evidenced by—

(1) cohabitation, or

(2) ownership of joint property, or

(3) filing of joint tax returns, or

(4) other relevant evidence.

the bill, as originally introduced, provided that the alien would be deportable unless he or she provided the information listed above. The bill was subsequently amended, in an attempt to shift the emphasis from deportation to adjustment of status, to provide that the Attorney General shall remove the conditional status and adjust the alien to permanent resident status provided that the applicant supplies the necessary information.

The Committee does not intend to cast a negative or suspicious eye on alien applicants with this legislation. Government figures currently show that 30% of alien marriages involve fraud. The Committee does not intend to complicate unnecessarily the lives of those involved in the remaining 70% of these marriages.

In the case of death or incapacity of a spouse, the Committee believes that the Attorney General should remove the conditional resident status and automatically grant the alien permanent resident status.

The couple will have from 90 days before the second anniversary of the alien's admission as a conditional resident until the second anniversary to file a petition. The Attorney General must make his determination no later than 90 days after the second anniversary, as long as the couple applies within the prescribed time period. If the couple fails to apply, the alien spouse (and alien son or daughter, if any) is subject to deportation.

The admission or adjustment of aliens as conditional residents shall apply against the numerical limitations specified in sections 201 and 202 of the INA, if applicable, and the number of preference

visas under section 202 or 203 shall be reduced by the appropriate number.

The Committee intends that the alien spouse (and alien son or daughter, if any) who enters the U.S. in conditional resident status be entitled to the same benefits currently given to a permanent resident alien, including, but not limited to, social security cards, work authorization, and all other available social services. Also, the conditional status period will count toward the period of lawful permanent residence required under naturalization provisions of Title III of the INA.

In fashioning a procedure for the Attorney General to follow to determine eligibility for permanent resident status after the two year conditional status, the Committee adopted what it considers to be an objective test. The Committee was required to strike a delicate balance between the government's need to effectively enforce our laws and protect an individual's right to privacy. This bill provides a balanced approach by requiring an objective and unintrusive test. In most cases the couple should be able to satisfy the Attorney General through documentary evidence. When an interview with an officer of the Immigration and Naturalization Service is necessary, questions should not probe into the intimate personal habits of the applicants.

It is not the Committee's intent to reward with permanent resident status aliens who enter into a marriage but remain married to claim that they are still partners in a bona fide marriage for the purpose of removing the conditional resident status. The Committee expects that there will be an actual family unit at the time of application. Separations or the initiation of actions to dissolve or annul the marriage may properly be reason to conclude that a bona fide relationship does not exist if there are no efforts underway to reconcile. So long as the marriage was not a fraudulent one from the outset, the U.S. citizen or permanent resident can repetition for the alien's readmission for conditional status if the marital relationship resumes.

LATE FEE

According to the bill, the couple may petition for removal of the conditional resident status and adjustment to permanent resident status from 90 days before the second anniversary to the second anniverary. If for some reason the couple fails to apply within the prescribed time period, the bill provides a "late fee" of $100. Since the alien is automatically subject to deportation if he or she does not apply for removal of the conditional status after the second anniversary, the late fee provision provides that the deportation proceedings against the alien will be stayed pending a determination.

When the couple applies, however, all of the conditions which were to have been considered by the Attorney General at the second anniversary must be true at the time of late filing.

FIVE YEAR RESTRICTION ON PETITIONING FOR ANOTHER SPOUSE

The bill imposes a restriction on an alien spouse from petitioning for another alien spouse for five years or until the alien presents clear and convincing evidence that the prior marriage on the basis

of which the alien acquired permanent resident status was not entered into for the purpose of evading provisions of the immigration laws.

The Committee does not intend that no alien ever be given the opportunity to petition for another spouse after receiving permanent resident status. This provision does, however, provide an additional deterrent to ensure that an alien does not intentionally wait out the two year conditional status, become a permanent resident without condition, divorce and immediately petition for his or her own alien spouse.

HUMANITARIAN WAIVER PROVISION

The Committee realizes that, in contemporary American society, not all marriages last for two years. It is important to remember, however, that the reason an alien spouse or alien son or daughter receives special treatment is the emphasis our immigration laws place on family reunification. The Committee supports this goal and would like to ensure that those who legitimately enter the country to be with a U.S. citizen or permanent resident be warmly welcomed. Were it not for the marital relationship, an alien would not be entitled to the same special treatment currently accorded to alien spouses.

The waiver provision of the bill which permits the Attorney General to grant permanent resident status even when the conditions of the bill are not fulfilled is meant to ensure that extreme hardship to an innocent party does not occur in cases where a marriage breaks down for legitimate causes.

Of special concern to the Committee are cases which involve children. The Committee intends that a waiver be granted in cases where there is genuine humanitarian need based upon unusual hardship. For example, there may be the case of a marriage that lasts less than two years that involves a U.S. citizen parent, an alien parent, and a U.S. citizen child. In establishing the conditional residency provision, the Committee did not intend to separate parents and minor children, nor did the Committee want an alien parent's resident status to be an issue in a court decision on a custody question. Where there may be instances where no hardship would result if the alien parent is deported, because of the potential difficulties inherent in family relations, the Committee views this provision as a safety mechanism to ensure that cases in which there is genuine humanitarian need will not be without recourse.

While the Committee intends that unusual hardships to U.S. citizen children is certainly one very important factor for the Attorney General to consider when making his determination, it is not the only circumstances where a waiver could be granted. Other causes might include abuse by a U.S. spouse, illness, or an unusually undesirable situation for the individual alien in that alien's own country. The Committee does not intend that every person who does not meet the criteria for removal of the conditional status will be granted a humanitarian waiver but there will be occasions when unusual circumstances warrant such relief, and the Committee expects that the Attorney General will give serious consideration to every meritorious application.

FIANCE(E) VISA PROVISIONS

Current law requires that the petitioner and the beneficiary intend to conclude a marriage within 90 days of entry. The bill adds an additional requirement that the two parties meet in person before a petition is approved. The Committee expects that this provision will deter many of the abuses of the "mail order bride" business.

Because a number of religious and cultures still arrange marriages and the parties may be actually proscribed from meeting, the Attorney General is given the authority to waive this requirement to accomodate those whose religion or culture legitimiately requires this type of exception.

Persons entering as finance(e)s on nonimmigrant K visas are also subject to the conditional resident provisions of the bill and must actually adjust status to gain permanent residence.

TERMINATION OF WAIVER OF EXCLUDABILITY

The Immigration and Nationality Act provides that waivers of excludability may be granted to the spouses of U.S. citizens or permanent residents who are ineligible because of criminal acts, fraud, or minor narcotics convictions if hardship to the U.S. spouse will result if the alien is not admitted. Once granted, these waivers are now permanent. The bill provides that any waiver of excludability granted to a conditional resident will terminate if the alien is not granted permanent resident status without conditions. The Committee believes that since the rationale for granting the waiver was hardship to the U.S. spouse, if the relationship no longer exists, the need for the waiver no longer exists. In this way, an alien cannot use the waiver, which was a benefit of the marriage, to facilitate a later entry in a category where a waiver would not be available.

SECTION-BY-SECTION ANALYSIS

Section 1. Establishment of a conditional resident status

Section 1 of the bill adds a new Section 216 to the Immigration and Nationality Act and establishes a two-year conditional resident status for alien spouses (and alien sons or daughters, if any) who receive permanent resident status as a result of a marriage to a U.S. citizen or permanent resident. The conditional status runs from the time of admission until subsequent adjustment to permanent resident status. The time in conditional status counts towards the time required for naturalization in Title III of the INA. During the conditional status the alien becomes deportable if the Attorney General determines a marital relationship no longer exists. The couple will have from 90 days before the 2nd anniversary of the alien's admission as a conditional resident until the second anniversary to file a petition to adjust status to that of permanent resident. There is also a waiver provision whereby the Attorney General may remove the conditional status in hardship cases even when the alien fails to meet the prescribed conditions. An alien who does not file in a timely manner is subject to a $100 late fee and must show the marriage is still valid at the time of application. A classification petition for a spouse filed by a person who obtained perma-

nent resident status through marriage shall not be approved for a period of five years unless the Attorney General is satisfied that the previous marriage was not contracted for the purpose of evading immigration laws. The penalty for marriage-related immigration fraud is imprisonment for up to five years or a fine of up to $250,000, or both.

Section 2. Provisions affecting nonimmigrant fiance(e)s

Section 2 requires that the applicant for a "K" visa and the petitioner have met in person prior to the approval of a petition. A fiance or fiancee is subject to the conditional status provisions of the bill.

Section 3. Exclusion for misrepresentations

Section 3 revises the current exclusion provision for fraud to include attempts to procure any benefit under the INA.

Section 4. Termination of waivers of excludability

Section 4 provides for the termination of any waivers of excludability granted to persons acquiring conditional status unless they subsequently gain permament resident status without conditions.

Section 5. Deportation for misrepresentations

Section 5 adds a deportation provision identical to the exclusion provision in Section 3.

Agency Views

Set forth below is a letter from the Department of Justice explaining the Administration's views regarding S. 2270.

U.S. Department of Justice,
Office of Legislative and Intergovernmental Affairs,
Washington, DC, August 14, 1986.

Hon. Strom Thurmond,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: This responds to your request for the views of the Department of Justice on S. 2270, a bill to amend the Immigration and Nationality Act, to deter immigration-related marriage fraud and other immigration fraud. For the reasons set forth below, the Department supports enactment of this legislation with suggested revisions.

The bill addresses a significant problem in the administration of the immigration laws, marriage and related frauds, carried out to circumvent the requirements of the immigration visa provisions. The bill would revise the immigration laws to establish conditional immigration status for an alien spouse, revise the provisions relating to nonimmigrant fiances, restrict future immigration privileges if the alien has previously been involved in fraud, and create a criminal penalty for marriage fraud.

Section 1.

The major portion of the bill establishes a conditional immigration status for an alien spouse and children of that spouse. This conditional status would also apply to aliens who marry following entry on a nonimmigrant fiance visa. The conditional status would apply to any alien who derives an immigration benefit through marriage, and would continue up until the second anniversary of the alien's obtaining the status of lawful admission for permanent residence.

The burden of proving a *bona fide* marriage would fall on the alien spouse and the petitioning U.S. citizen or permanent resident spouse. They would have to prove four elements during the ninety day period preceding the second anniversary of the alien's obtaining the status of lawful admission for permanent residence. First, they would have to show that the marriage was entered into in accordance with the laws of the place where the marriage took place. Second, they would have to show that the marriage has not been judicially annulled or terminated. Third, and fourth, the spouses would have to show that "no fee or other consideration" was given for filing a visa petition, and that the parties to the marriage have maintained a *bona fide* marital relationship. This latter element could be established by evidence of cohabitation, joint property, tax returns and other indices of marriage.

If the spouses establish these elements, then the conditional status is lifted as of the second anniversary of the alien's obtaining the status of lawful permanent residence. If the spouses fail to establish these elements, then the conditional status is terminated as of the second anniversary. The spouses and sons or daughters will then be deported from the United States.

The Attorney General has until ninety days after the second anniversary of the alien's obtaining the status of lawful admission for permanent residence to make a determination on petitions which were filed in a timely manner. Spouses who fail to meet the filing deadline can submit the petition at any time accompanied by a one hundred dollar late fee.

During the conditional status period, the alien spouse may file a visa petition on behalf of his or her unmarried sons or daughters under Section 204(a) of the Immigration and Nationality Act, 8 U.S.C. 1154. However, the alien may not file a visa petition for another spouse until five years after he or she was first admitted, unless the alien can prove to the attorney General that the prior marriage was not contracted for the purpose of evading any provisions of the immigration laws.

The conditional status period will count toward the period of lawful permanent residence required under the naturalization provisions in Title III of the Act. This means that the period following admission as an immigrant or adjustment to conditional status will count as normal permanent residence.

Comments

Present protections against marriage fraud are totally inadequate. Once permanent status has been granted, it is almost impossible to revoke, rescind, deport, or even locate the alien or the

original spouse. By postponing the privilege of permanent resident status until two years after the alien's obtaining the status of lawful admission for permanent residence, the bill provides a balanced approach. On the one hand, it strikes at the fraudulent marriage by the simple passage of time: it is difficult to sustain the appearance of a *bona fide* marriage over a long period. On the other hand, it still allows an alien spouse and son or daughter to come to the United States, and therefore provides for family unification.

The bill also does away with the distinction between fiances and other aliens whose benefits are based on marriage. Commonly, a fiance who does marry the petitioning spouse will immediately terminate the marriage, remarry, and file a preference petition for another alien. This significant loophole must be closed, and the bill would do that.

The Department is of the view that these necessary changes may be strengthened by the deletion or revision of certain other provisions in the bill. First, it is important to recognize that the bill would appear to allow persons who enter into a fraudulent marriage, but remain married to claim that they are still partners in a *bona fide* marriage for purposes of removing the conditional status. This is the case, because under existing interpretations of "marriage" for purposes of visa petition filing and adjustment of status to permanent resident, the judicial interpretation and the interpretation applied by the Board of Immigration Appeals is that no examination of the "viability;" of a marriage may occur. Under the board's holding in *Matter of Boromand,* 17 I & N Dec. 450 (BIA 1980), estrangement, or even separation in anticipation of divorce, are not sufficient grounds to deny a visa petition or adjustment of status. This holding has recently been applied by the Sixth Circuit Court of Appeals in a criminal case to bar prosecution for perjury and false statements where the U.S. citizen spouse was asked to stop divorce proceedings, asked to provide false statements to INS officials and promised $2,500 for her cooperation. The court found that if "viability" of the marriage was not material to the visa petition approval, then a crucial element of fraud was absent. *United States* v. *Qaisi,* No. 85–5274 (6th Cir., 1985).

To avoid the possibility that the same type of interpretation might be applied to the provisions of this bill, it is necessary to state explicitly that there must be an actual family unit at the time of application for permanent residence and that separation of the spouses will result in the denial of the permanent resident status. Separation would include actually living apart or having initiated any action to dissolve or annul the marriage.

We believe that several provisions should be clarified. In Section 216(a) of the bill, the alien son or daughter of an alien granted conditional residence is also accorded that conditional status. Subsection (d)(2) defines "son or daughter" as an alien who obtains a status, conditional or permanent, by virtue of "being the son or daughter or an individual through a marriage" described in paragraph (1). This language is not entirely clear; it could be interpreted as establishing a new category of derivative beneficiaries independent of any other immigrant provision.

Also, as a matter of policy, it is not clear that fraud should be defined in terms of the payment of a fee or other consideration.

There are numerous cases where marriages are entered into as a favor to the alien. These are clearly marriages meant to evade the immigration laws, and the spouses have no intention of living together as husband and wife. It is not readily apparent that these marriages should be considered valid, when those where a small payment is made are invalid.

The Department also suggest that Subparagraph (b)(6)(A) be revised because it calls for the Attorney General to remove a conditional status which would already have been terminated under (b)(3).

The Department further suggests that the new Subsection (d), of Section 245 of the Act relating to limitations on adjustment of status, and Section 2(d) of the bill be reconciled. The new Subsection 245(d) would prohibit adjustment of status under Section 245 by conditional status aliens. Section 2(b) of the bill apparently would amend the new Subsection 245(d) within the bill, to also apply it to aliens coming as nonimmigrant fiances under Section 101(a)(15)(K) of the Act. Rather than amend a provision within the bill itself, it would probably be better simply to put in a separate section of the bill dealing with Section 245 of the Act, and incorporate both of the new provisions.

Section 2.

Section 2 of the bill tightens the requirements for eligibility for a nonimmigrant fiance visa under Section 214(d) of the Act. This revision of Section 214(d) would require a fiance to have met the petitioning spouse and to have a *bona fide* intention to marry. The new requirement that the two parties have met is a reasonable limitation on what is presently an open-ended provision. This section would also require that an alien who has received a (K) visa and who has concluded a marriage, must adjust their status through normal procedures. Presently, such an alien may adjust automatically.

Section 3.

Section 3 of the bill revises the present Section 212(a)(19) of the Act relating to exclusion for fraud or willful misrepresentation of a material fact. Presently, an alien is inadmissible if he has attempted to procure or has procured a visa, or other documentation or seeks to enter by fraud or willful misrepresentation of a material fact. The purpose of this section is to provide that the alien would also be precluded from seeking any other benefit provided under the Act.

Section 4.

Section 4 amends Subsection (a) of Section 241 to provide for deportation of those who engage in fraud or willful misrepresentation to procure documentation or entry into the United States. This provision should be broadened to include the language used in Section 3, "or other benefit provided under this Act."

The Department supports enactment of this bill with the suggested changes. These new provisions should go a long way toward combatting the use of marriage fraud in obtaining immigrant status in the United States.

The Office of Management and Budget has advised this Department that there is no objection to submission of this report from the standpoint of the Administration's program.

Sincerely,

JOHN R. BOLTON,
Assistant Attorney General.

REGULATORY IMPACT STATEMENT

Pursuant to paragraph 11(b), rule XXVI, of the Standing Rules of the Senate, the Committee has concluded that the bill may impose regulatory costs upon a very small number of individuals who acquire U.S. permanent resident status through marriage to a U.S. citizen or permanent residence.

The regulatory aspects of this legislation require an application for removal of the conditional status during the ninety days preceding the second anniversary of admission. The Committee intends for the Department of Justice to prescribe the form and procedures for the application. Requirements for supporting documentation to show the continuation of the marital relationship should be clearly defined. The committee intends that the application process be implemented reasonably, without burdensome documentation requirements for bona fide applicants. There shall be no fee for a timely filing of this application.

The regulatory impact on the Federal Government to prepare the application form would be minimal.

COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC. August 14, 1986.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 2270, a bill to amend the Immigration and Nationality Act to deter immigration-related marriage fraud and other immigration fraud, as ordered reported by the Senate Committee on the Judiciary, August 8, 1986. We estimate that enactment of this bill would result in no net costs to the federal government and in no costs to state or local governments.

S. 2270 would amend the Immigration and Nationality Act to create a systematic procedure for the Immigration and Nationalization Service (INS) to review all cases involving the immigration of alien spouses. The main effect of the bill would be establishment of conditional status for alien spouses and any sons and daughters accompanying them. Instead of being admitted as permanent resident aliens, the spouses and children would have conditional status for their first two years after entering the United States. This conditional status would not affect their right to benefits in anyway. The INS would have the power to deport the aliens at any time in this period if it determines that the marriage is fraudulent. At the end of this two-year period, the couple would file a petition with the

INS, which would then review the marriage to determine if it is legitimate.

S. 2270 would also increase the penalties for U.S. citizens committing marriage fraud and require that the bride and groom have met before getting married. Current law does not require a U.S. citizen or resident alien to have met this or her alien spouse before marriage.

Based on information provided by the INS, CBP estimates that enactment of this legislation would result in no increased cost to the federal government. The INS expects that the establishment of conditional status would simplify its procedures, since it would shift the burden of proof from the Service to the immigrants; the INS also expects this would have a sizeable deterrent effect, possibly reducing the number of aliens admitted for marriage-related reasons by as much as 15 percent. While processing the petitions at the end of the two-year period would result in increased paperwork, there would be a corresponding reduction in interviews and investigations because of the deterrent effect and the increased availability of information.

If you wish further details on ths estimate, we will be pleased to provide them.

With best wishes,

Sincerly,

EDWARD GRAMLICH
(For Rudolph G. Penner, Director).

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 2270, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italic; and existing law in which no changes are proposed in shown in roman):

IMMIGRATION AND NATIONALITY ACT,

As Amended to September 1, 1980

(ACT OF JUNE 27, 1952; 66 STAT. 163; 8 U.S.C. 1101 ET SEQ.)

WITH AMENDMENTS AND NOTES ON RELATED LAWS

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, divided into titles, chapters and sections according to the following table of contents, may be cited as the "Immigration and Nationality Act" [8 U.S.C. 1101, note].

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Sec. 212. General classes of aliens ineligible to receive visas and excluded from admission; waivers of inadmissibility.

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Sec. 214. Admission of nonimmigrants.
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CHAPTER 5—DEPORTATION; ADJUSTMENT OF STATUS

Sec. 241. General classes of deportable aliens.

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CHAPTER 8—GENERAL PENALTY PROVISIONS

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Sec. 275. Entry of alien at improper time or place; misrepresentation and concealment of facts.

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PROCEDURE FOR GRANTING IMMIGRANT STATUS

SEC. 204. [8 U.S.C. 1154] (a) *(1)* Any citizen of the United States claiming that an alien is entitled to a preference status by reason of the relationships described in paragraphs [paragraph] (1), (4), or (5) of section 203(a), or to an immediate relative status under section 201(b), or an alien lawfully admitted for permanent residence *(other than an alien ineligible from petitioning under paragraph (2))* claiming that an alien is entitled to a preference status by reason of the relationship described in section 203(a)(2), or any alien desiring to be classified as a preference immigrant under section 203(a)(3) (or any person on behalf of such an alien), or any person desiring and intending to employ within the United States an alien entitled to classification as a preference immigrant under section 203(a)(6), may file a petition with the Attorney General for such classification. The petition shall be in such form as the Attorney General may by regulations prescribe and shall contain such information and be supported by such documentary evidence as the Attorney General may require. The petition shall be made under oath administered by any individual having authority to administer oaths, if executed in the United States, but, if executed outside the United States, administered by a consular officer or an immigration officer.

(2)(A) No classification petition claiming entitlement to a preference status as a spouse under section 203(a)(2) which was filed by an alien who, by virtue of a prior marriage, had been accorded the status of an alien lawfully admitted for permanent residence as the

spouse of a citizen of the United States as described in section 201(b), or as the spouse of an alien lawfully admitted for permanent residence as described in section 203(a)(2), shall be approved until—

(i) a period of five years has elaspsed since the alien spouse acquired the status of an alien lawfully admitted for permanent residence, or

(ii) the alien has established to the satisfaction of the Attorney General by clear and convincing evidence that the prior marriage on the basis of which the alien obtained the status of an alien lawfully admitted for permanent residence was not contracted for the purpose of evading any provision of the immigration laws,

whichever occurs first.

(B) This paragraph shall not apply to a petition filed by an alien whose prior marriage was terminated by the death of his or her spouse.

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GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND EXCLUDED FROM ADMISSION; WAIVERS OF INADMISSIBILITY

Sec. 212 [8 U.S.C. 1182] (a) Except as otherwise provided in this Act, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:
(1) Aliens who are mentally retarded;

* * * * * * *

[(19) Any alien who seeks to procure, or has sought to procure, or has procured a visa or other documentation, or seeks to enter the United States, by fraud, or by willfully misrepresenting a material fact;]

(19) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure, or has sought to procure or has procured, a visa, other documentation, or entry into the United States or other benefit provided under this Act;

* * * * * * *

(m) Any waiver of excludability granted under subsection (h), (i), or (j) to an alien who thereafter—

(1) is accorded the conditional status established under section 216(a), or

(2) is admitted to the United States in the status of a nonimmigration described in section 101(a)(15)(K),

shall terminate upon the termination of such status unless such alien has previously obtained the status of an alien lawfuly admitted for permanent residence without conditions.

* * * * * * *

ADMISSION OF NONIMMIGRANTS

Sec. 214. [8 U.S.C. 1184] (a) The admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe, including when he deems necessary the giving of a bond

with sufficient surety in such sum and containing such conditions as the Attorney General shall prescribe, to insure that at the expiration of such time or upon failure to maintain the status under which he was admitted, or to maintain any status subsequently acquired under section 248 such alien will depart from the United States.

* * * * * * *

(d) A visa shall not be issued under the provisions of section 101(a)(15)(K) until the consular officer has received a petition filed in the United States by the fiancée or fiancé of the applying alien and approved by the Attorney General. The petition shall be in such form and contain such information as the Attorney General shall, by regulation, prescribe. It shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties [have a bona fide intention to marry] *have previously met in person, have a bona fide intention to marry,* and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival. In the event the marriage with the petition does not occur within three months after the entry of the said alien and minor children, they shall be required to depart from the United States and upon failure to do so shall be deported in accordance with sections 242 and 243. In the event the marriage between the said alien and the petitioner shall occur within three months after the entry and they are found otherwise admissible, the Attorney General shall record the lawful admission for permanent residence of the alien and minor children as of the date of the payment of the required visa fees.

TRAVEL DOCUMENTATION OF ALIENS AND CITIZENS

SEC. 215. [8 U.S.C. 1185] (a) Unless otherwise ordered by the President, it shall be unlawful—

* * * * * * *

CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN SPOUSES AND SONS AND DAUGHTERS

SEC. 216. (a) Notwithstanding any other provision of this Act, an alien spouse (as defined in subsection (d)(1)) and an alien son or daughter (as defined in subsection (d)(2)) shall be considered, at the time of obtaining the status of an alien lawfully admitted for permanent residence, to have obtained such status on a conditional basis subject to the provisions of this section.

(b)(1) The conditional status established under subsection (a) for an alien spouse and an alien son or daughter shall be terminated and the alien spouse or alien son or daughter shall be deportable from the United States if the Attorney General determines, before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence, that—

(A) the marriage referred to in subsection (d)(1)—

(i) was entered into for the purpose of procuring an alien's entry as an immigrant, or

(ii) has been judicially annulled or terminated, other than through the death of a spouse;

(B) a fee or other consideration (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) was given for the filing of a petition under section 204(a) or 214(d) with respect to the alien spouse of alien son or daughter; or

(C) the parties to the marriage have not maintained a bona fied marital relationship.

In applying subparagraph (C), the Attorney General shall take into account the death or incapacity of a spouse.

(2) The Attorney General shall remove the conditional status established under subsection (a) for an alien spouse or alien son or daughter, to be effective as of the second anniversary of the alien's obtaining the status of lawful admission for permanent residence described in subsection (d)(1), if during the period of 90 days before such data, the alien spouse and the spouse of the alien spouse (if not deceased) jointly submit to the Attorney General a petition which requests the removal of such conditional status and which establishes to the satisfaction of the Attorney General that—

(A) the marriage referred to in subsection (d)(1)—

(i) was entered into in accordance with the laws of the place where the marriage took place, and

(ii) has not been judicially annulled or terminated, other than through the death of a spouse;

(B) no fee or other consideration (other than a fee to an attorney for assistance in preparation of a lawful petition) was given for the filing of a petition under section 204(a) or 214(d) with respect to the alien spouse or alien son or daughter; and

(C) the parties to the marriage have maintained a bona fide marital relationship, as evidenced by cohabitation, ownership of property jointly, filing of joint tax returns, or other relevant evidence during the previous period.

In applying subparagraph (C), the Attorney General shall take into account the death or incapaity of a spouse.

(3) If no petition is filed in accordance with the provisions of paragraph (2), or if the Attorney General is not satisfied with the evidence presented, then the conditional status established under subsection (a) for an alien spouse or an alien son or daughter shall be terminated and the alien spouse and alien son or daughter shall be deportable from the United States as of the second anniversary of the alien's obtaining the status of lawful admission for permanent residence described in this section.

(4) Notwithstanding paragraphs (2) and (3), the conditional status of an alien spouse who petitioned under paragraph (2), or the conditional status of an alien son or daughter of an alien spouse who petitioned under paragraph (2), shall continue until 90 days after the second anniversary of the alien's obtaining the status of lawful admission for permanent residence unless previously the Attorney General removed such status under paragraph (2) or such status was terminated under paragraph (3).

(5) The Attorney General may remove the conditional status of an alien who fails to meet the conditions of this section and may adjust his status to that of an alien lawfully admitted for perma-

nent residence if the alien demonstrates that extreme hardship would result if such alien is deported. In determining extreme hardship, the Attorney General shall consider circumstances occurring only during the period that the alien was admitted for conditional status as provided in this section.

(6)(A) The Attorney General may stay the deportation of, and accord the status of lawful admission for permanent residence to, an alien spouse or an alien son or daughter of an alien spouse who—

(i) after the expiration of the time period prescribed in this section petitions in accordance with paragraph (2);

(ii) establishes to the satisfaction of the Attorney General that the facts contained in such petition are true at the time such petition is submitted; and

(iii) pays a fine of $100, imposed by the Attorney General, for failure to submit such petition within the time limitations prescribed in paragraph (2).

(B) Deportation proceedings shall be stayed against an alien petiting in accordance with this paragraph pending a determination by the Attorney General under subparagraph (A).

(C) For purposes of title III, in the case of an alien who is in the United States as a lawful permanent resident on a conditional basis under this section, the alien shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in United States as an alien lawfully admitted to the United States for permanent residence.

(D) For purposes of this section—

(1) the term "alien spouse" means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) by virtue of a marriage; and

(2) the term "alien son or daughter" means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) by virtue of being the son or daughter of an individual through a marriage described in paragraph (1).

CHAPTER 5—DEPORTATION; ADJUSTMENT OF STATUS

GENERAL CLASSES OF DEPORTABLE ALIENS

SEC. 241. [8 U.S.C. 1251] (a) Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—

(1) at the time of entry was within one or more of the classes of aliens excludable by the law existing at the time of such

* * * * * * *

(18) has been convicted under section 278 of this Act [8 U.S.C. 1328] or under section 4 of the Immigration Act of February 5, 1917; [or]

(19) during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with—

(A) the Nazi government of Germany,

(B) any government in any area occupied by the military forces of the Nazi government of Germany,

(C) any government established with the assistance or cooperation of the Nazi government of Germany, or

(D) any government which was an ally of the Nazi government of Germany,

ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion[.] *; or*

(20) has sought to procure or has procured a visa or other documentation or entry into the United States or any other benefit provided under this Act by fraud or by willfully misrepresenting a material fact.

* * * * * * *

ADJUSTMENT OF STATUS OF NONIMMIGRANT TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

SEC. 245. [8 U.S.C. 1255] (a) The status of an alien who was inspected and admitted or paroled into the United States may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is filed.

* * * * * * *

(d) Subsection (a) shall not permit the adjustment of status of an alien who has the status of an alien lawfully admitted to the United States for permanent residence on a conditional basis under section 216 or of a nonimmigrant described in section 20 101(a)(15)(K).

ENTRY OF ALIEN AT IMPROPER TIME OR PLACE; MISREPRESENTATION AND CONCEALMENT OF FACTS

SEC. 275 *(a).* [8 U.S.C. 1325] Any alien who (1) enters the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offenses, be guilty of a misdemeanor and upon conviction thereof be punished by imprisonment for not more than six months, or by a fine of not more than $500, or by both, and for a subsequent commission of any such offenses shall be guilty of a felony and upon conviction thereof shall be punished by imprisonment for not more than two years, or by a fine of not more than $1,000, or both.

(b) Any individual who knowingly enters into a marriage contract for the purpose of evading any provision of the immigration laws

shall be imprisoned for not more than five years, or fined not more than $250,000, or both.

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